Recommendations for Cable Franchise Reform

MB Docket No. 05-311

July 12, 2006

BELLSOUTH
Listening. Answering.

BellSouth's Video Operations

- BellSouth currently holds 20 cable franchises and provides competitive cable (i.e., overbuild) service to approximately 40,000 customers in 14 markets primarily around Atlanta and in south Florida. BellSouth offers over 200,000 households a competitive choice of cable services.

- BellSouth's service offers approximately 170 analog and digital channels, including local broadcast and broadcast cable channels, video and music channels, as well as premium and pay-per-view channels.

- BellSouth is actively testing Internet Protocol Television ("IPTV") along with IP-based voice and data services delivered over a next generation two-way broadband network. Final decisions on whether to launch an IPTV product will depend on the results of ongoing field trials, a full assessment of the business opportunity of IPTV, *and getting the right regulatory structure in place.*

▶ ***This proceeding is about promoting competition through the widespread deployment of next generation broadband networks.***

Video Competition is Good for Consumers

- National cable rates rose 86% from 1995-2004[1], whereas national phone rates decreased 22% from 2000-2005.[2]

- A 2004 U.S. Government Accounting Office study found that *cable rates were 15% to 41% lower in markets with wire-based competition.*[3]

- More recent reports have shown that in cities where the Telco has entered the video market, overall cable bills dropped as much as 50%, with an increase in services offered as well.[4]

- One recent study found that Consumers could save an estimated ***$107 billion*** over the next five years from additional video competition.[5]

- As the ***New York Times*** recently summarized, where Telco video is introduced the incumbent cable provider is "fighting back" by "discounting their television and phone plans, throwing in premium movie channels and faster Internet connections."[6]

BellSouth's Experiences in Obtaining Cable Franchises

- Over ten years ago, the FCC noted that the "*local franchise process is, perhaps, the most important policy-relevant barrier to competitive entry in local cable markets.*" [7]

- One very experienced, traditional cable over-builder has long pointed to the franchising process as a "very high barrier to market entry" that has forced them to abandon plans to enter some markets.[8]

- ***Average time to negotiate each of BellSouth's 20 franchises was approximately 10 months*** -- if we were to provide competitive cable services throughout our region it could require obtaining ***more than 1500 franchises*** -- a staggering impediment to competitive entry.

- *The local franchising process remains the major regulatory impediment to competitive entry in the multichannel video market.* BellSouth's **real-world** experiences demonstrate the problems inherent in the local franchising process -- it is administratively cumbersome, slow and costly.

BellSouth's "Real-World" Franchising Experience

Example of an actual Local Franchise Ordinance in BellSouth's Region:

- Franchisee must build out to all areas with a density of 7 or more dwelling units/mile
- Franchisee must provide:
  - Mobile and stationary TV production equipment, plus 2 studios, with a minimum value of $2 million in TV production hardware
  - Free Expanded Basic and high speed Internet access to public schools
  - Expanded Basic and high-speed data service and electronic mail to LFA-owned buildings
  - A virtual channel for LFA info.
  - 150 ad spots per month for LFA advertising
  - Up to 100 digital paging services for senior officials
  - Single point-to-point video/audio connectivity between county court house and jail
  - Use of Franchisee's studios and personnel for local production or, at the LFA's option, the equivalent value in the form of alternative technological services

▶ *On multiple occasions, LFA demands –especially build out requirements—have led BellSouth to withdraw applications because the business case could no longer be made for deployment of the service.*

BellSouth's "Real-World" Franchising Experience

- Even where LFA is supportive of competitive entry, Incumbent Cable providers can impose delay and cost on new entrants:
  - For example, when BellSouth filed an application with one LFA, incumbent cable operators filed extensive objections under the state's "level playing field" statute dragging out the approval process for **9 months**.
  - To address the "level playing field" issue, LFA allowed the 7 existing incumbent cable providers to enter each others' monopoly service areas without build-out requirements.
  - Despite this grant of regulatory relief, the incumbents still challenged the approval of BellSouth's franchise in *court proceedings that lasted more than 2 years.*

As over-builder RCN has aptly characterized, the franchise process is a mechanism by which the incumbent cable operator seeks "to impose the highest possible burdens on the competitive provider." [9]

All franchise applications filed by competitive video providers should be ruled upon within 90 days, or be deemed granted.

- In the absence of a rule to prescribe length of time by which competitive cable franchise applications must be addressed, LFAs and incumbent cable providers can delay the process for months or even years.

- The FCC should set a reasonable timeframe by which LFAs are required to act on competitive franchise applications, particularly when those competitors already have access to and network facilities in the public rights-of-way ("R-O-W").

- There is ample precedent for the FCC to adopt specific schedules for LFAs to follow -- BellSouth's proposed 90-day timeframe is consistent with Sec. 617 of the Cable Act and FCC rules (47 C.F.R. Sec. 76.502) which govern LFA approval of sales and transfers. The rules governing the maximum timeframe for approval of competitive franchises should have a similar structure to the FCC's processing rules governing sales and transfers.

LFAs should be preempted from imposing build-out requirements on competitive video providers

- When the telephone market was opened to competition, *the FCC pre-empted build-out requirements for new competitors*, including cable companies offering telephony. *In re Texas PUC*, CC Dkt. 96-13 (1997). In that analogous situation, the FCC found:
  - "build-out requirements are of central importance to competitive entry because these requirements impact the threshold question of whether a potential competitor will enter the …market at all."
  - Build-out requirements "impose a financial burden that has the effect of prohibiting certain entities from providing" service.
- Importantly, **there is no build-out requirement in the Cable Act** -- although incumbent cable operators have argued otherwise, citing to either Sec. 621(a)(3) or 621(a)(4)(A), neither statute imposes a build-out obligation.
- A build-out requirement is not required to prevent "redlining."

LFA-assessed fees (or in-kind requirements) beyond those authorized by the Cable Act should be prohibited

- Current process allows LFAs to evade the statutory franchise fee cap by refusing to approve application without "voluntary grants".

- Where authorized by the Cable Act, any requirement to contribute support beyond franchise fee obligations (i.e., PEG capital support) should only be allowed if applied in a non-discriminatory and equitable manner, so that it does not disproportionately and unfairly burden new competitors.

- Requirements for significant fixed, up-front support payments (i.e., grants) should be prohibited. Such demands are inherently "unreasonable" because they disproportionately burden new entrants which (unlike the incumbent cable provider) have no assured customer base from which to recover such costs.

Prohibit LFAs from Blocking Deployment of ILEC Broadband Networks

- The FCC needs to categorically reject efforts by some LFAs to prevent ILECs from deploying next-generation Broadband Networks unless they first obtain a franchise.

- The Cable Act makes clear that a cable franchise is only required under federal law when a cable operator provides cable service to subscribers, and not before.

- There is simply no point to a requirement that BellSouth obtain a cable franchise before beginning network upgrades that involve no additional use of the R-O-W beyond that which it has already been authorized to make -- it is bad public policy and discourages deployment of new technologies and services.

All state or local Level Playing Field requirements should be preempted to the extent they impose obligations beyond those authorized by federal law.

- LPF statutes frequently operate or are used by the incumbent operator as intentional barriers to competitive entry.

- They protect only incumbent cable operators and typically do not prohibit LFAs from imposing conditions on new entrants that are "more burdensome or less favorable" than the incumbent's franchise.

- If LFAs are allowed to impose on new competitive video entrants the same requirements as those previously imposed on incumbents prior to competition, new entrants would be burdened disproportionately. Section 621 recognizes that LFA legal authority to impose a condition may be reasonable when granting a franchise to the first cable operator serving an area but unreasonable when the same condition is imposed on the second, third, or fourth service provider.

Support for FCC Action

- Numerous and diverse parties have asked the FCC to reform the local cable franchising process and have proposed changes that will facilitate competitive entry and expand consumer benefits.

- Consumer groups, public interest organizations, trade associations, equipment vendors, as well as smaller telecom carriers seeking to offer competitive cable services submitted comments and while their proposals vary to some extent, their central message does not – namely, that the local franchising process can and must be changed.

- These parties point out that the current process is outdated; it rewards the incumbent cable operators; it delays video competition and thus consumer choice; and it impedes the deployment of mixed-use broadband telecommunications infrastructure and related FCC policies.

- The Consumers for Cable Choice summed it up well when they said: "As long as the regulatory framework continues to choose winners and losers in the local video market, consumers will be forced to pay exorbitant rates and competition will not thrive."[10]

Source of Reference

1. *FCC Report on Cable Industry Prices, 2/4/05*
2. *TNS Telecoms*
3. *GAO, "Wire-based Competition Benefited Consumers in Selected Markets", Report to the Subcommittee on Antitrust, Competition Policy and Consumer Rights, Committee on the Judiciary, U.S. Senate, 2/04*
4. *Multiple Sources:*
   http://www.multichannel.com/article/CA6277743.html?display=Breaking+News
   http://www.malibutimes.com/articles/2005/12/21/news/news2.prt
5. *The American Consumer Institute, "An Analysis of Cable TV Services: Are Older Consumers Losing Out?", 10/17/05*
6. *"AT&T Is Calling to Ask About TV Service. Will Anyone Answer?", nytimes.com, 7/3/06*
7. *FCC Report on Video Competition, 9/28/94*
8. *Petition of RCN in MD Dkt. 02-70 (filed April 29, 2002).*
9. *April 4, 2001 Testimony of Robert Currey, Vice Chairman, RCN Corp, before the Senate Judiciary Committee, Subcommittee on Antitrust, Business Rights and Competition.*
10. *Opening Comments of Consumers for Cable Choice, MB Docket No. 05-311, 2/13/06*